PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS THIRD CIRCUIT, PHILADELPHIA, PA. THIS PROCEEDING IS TAKEN AGAINST WILLIAM H. FOLLAND; DR. LESLIE J. PAUL; BAMBERGER COAL COMPANY; DR. FRED W. TAYLOR; DR. E. R. MURPHY; D. O. LARSON; MARK TUTTLE; AND CHARLES W. KUTZ, DEFENDANTS IN COMPLETE AND FINAL DEFAULT.

NICHOLAS J. CURTIS, LL. B.
Petitioner Appearing in Person,
Present Address: No. 106 Mansion Street, Poughkeepsie,
New York

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT. The Proceedings is only against the Parties in Default

To the Honorable the Chief Justice
and Associated Justices of the
Supreme Court of the United States:

This case challenges the validity under the Federal Constitution and Federal Statutes (See citations on page 3, b of the Declaration); and the Constitution and Statutes of the State of Utah, the Decree of the Circuit Court of the United States within and for the Third Circuit.

Section 103, U. S. C. A. 28, See it on p. 66 of Record of Pleadings, is a venue statute which enables a complainant to file his suit in any district wherein an offense against the laws of the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried and punished in either district in the same manner as if it had been actually and wholly committed therein.

This statute is particularly applicable to the jurisdiction over crimes or offenses which consist of two or more distinct elements or acts that may be committed in different district, such as the crime of conspiracy. Rease v. United States, 99 F. 2d. 753.

Upon the theory that:

a. There may be a constructive presence in a State, distinct from personal presence, by which a crime committed in another State may be consumated, and render the person consumating it punishable at that place.

b. In construing criminal laws, courts must not be in too great solicitude for the criminal to give him immunity because of the difficulty in convicting or detecting him.

c. In determining the place of trial there is no oppression in taking the conspirators to the place where the overt act was performed rather than compelling the victims and witnesses to go to the place where the conspiracy was formed.

d. The size of the United States of North America has not become too great for the effective administration of civil and criminal justice.

e. Where a continuing offense is committed in more than one district the Sixth Amendment does not preclude a trial in any of those districts. Armour Packing Co. vs. U. S. 209 U. S. 56.

f. Overt acts performed in one district by one of the parties who had conspired in another district in violation of Title 18 Sections 52, 54, and 88 give civil and criminal jurisdiction to the court in the district where the overt act or acts are performed as to all the conspirators. Brown vs. Elliot 225 U. S. 392.

g. A conspiracy under the sections given in f. above may be continuing one and that the offense is not barred on the expiration of the period from the date of the conspiracy itself.

h. The fact that one of the conspirators was the servant of another conspirator does not preclude there being a con-

spiracy between them; and, until there is an affirmative withdrawal from conspiracy by the servant, his acts bind his employer and co-conspirator so far as preventing the statute of limitation from running. And

i. Until a conspirator affirmatively withdraws from a continuing conspiracy there is conscious offending that prevents the statute from running. Hyde vs. United States, 225 U. S. 347.

j. A conspiracy entered into in violation of the laws of the United States may be continuous crime and, if it was designed to be, and was continuous, every overt act was the act of all the conspirators by reason of the terms of their unlawful plot. Brown vs. Elliot, 225 U. S. 392.

k. In a conspiracy every act of one of the conspirators in furtherance of the common design is in contemplation of law the act of all. Sup. Ct. Ency. p. 1102. U. S. vs. Gooding, 12 Wheat. 466, 469, 6 L. Ed. 993; Lincoln vs. Claflin, 7 Wal. 132, 138, 19 L. Ed. 106; Nudd vs. Burrows, 91 U. S. 426, 438, 23 L. Ed. 286; Logan vs. United States, 144 U. S. 263, 309, 36 L. Ed. 429; Brown vs. U. S., 150 U. S. 93, 98, 37 L. Ed. 1010; Boyd vs. United States, 142 U. S. 540, 35 L. Ed. 1076.

l. In case of conspiracy when once the conspiracy or combination is established, the act of one conspirator, in the prosecution of the enterprise, is considered the act of all. Each is deemed to consent to, or command, what is done by any other, in furtherance of the common object. American Fur Co. vs. United States, 2 Reb. 358, 365, 7 L. Ed. 450; Nudd vs. Burrows, 91 U. S. 426, 438, 23 L. Ed. 286; United States vs. Gooding, 12 Wheat. 460, 469, 6 L. Ed. 429; Brown vs. United States, 150 U. S. 93, 98, 39 L. Ed. 1010; Logan vs. United States, 144 U. S. 263; Bannon vs. United States, 166 U. S. 464, 469, 39 L. Ed. 494; Clune vs. United States, 159 U. S. 590, 593, 4 L. Ed. 269; Connecticut Mut. Life Ins. Co. vs. Hullmon, 188 U. S. 208, 218, 47 L. Ed. 446; Lincoln vs. Claflin, 7 Wall. 132, this suit was filed in the Clerk's Office of the United States District Court for the

District of New Jersey.

On page 2 of the Declaration I state as follows:

The suit is one within the provisions of Section 103, Ch. 4, Title 28 U. S. C. A., "Offenses begun in one District and Completed in another," and offenses against the United States; also Sections 4 and 5, (and 15) of Title 15, U. S. C. A. and Rule 23-03 of R. of Pr. Civil Procedure, U. S. Dist. Cts.

The Honorable Court is prayed to exercise its said jurisdiction and cause the said defendants to be summoned and brought before the Court. Printed copies of Declaration are respectfully submitted herewith for all of the said defendants. See pp. 1-2 of Declaration.

On January 12, 1940, I filed Declaration with supplement annexed thereto with copies for all of the defendants.

On March 25, 1940, I caused summonses to be issued against 26 of the defendants named in my Declaration.

On April 16, 1940, summons returned served on Utah Fuel Company by serving its attorney (this would be H. Collin Minton, Jr. a defendant) on Utah Fuel Co. by serving Vice President; on Mrs. Helen N. Pappas and Nicholas Pappas and William V. Rosenkranz personally April 6th, Harry Sussman, Out of Dist. Sotirios Nicholaidis, deceased, filed.

The statute (103 U. S. C. A. 28) was originally a part of the statute with reference to conspiracy. (Tit. 15 Sec's 1, 2, 5 etc.) Rease vs. United States, 99 F. 2d. 753, (C. C. A. 4th C) but in its present form it does not provide any provisions for process to be issued and served, and the clause "and may be dealt with, inquired of, tried, determined, and punished in either" implies the rule that the "ordinary Federal Practice" under the Federal Rules of Civil Procedure and Hugh's Federal Practice is to be followed.

1st. The action is authorized by sections 43 and 47 of Title 28 U. S. C. A. and is within the Federal Court's jurisdiction as based on United States laws. Mitchell v. Greenough, 100 F. 2d. 184, rehearing denied, 1939, 100 F. 2d. 1006,

and certiorari denied. 1939, 58 S. Ct. 788, 306 U. S. 659, 83 L. Ed. 1056. And

2nd. It is also authorized by sections 4, 5, 15, 22, 25, and 26 of Title 15, U. S. C. A.

The right to maintain the present suit is conferred upon me by the due process clause and Acts of Congress regardless of my citizenship and of the amount in controversy. Section 1 of the Civil Rights Act of April 20, 1871, 17 Stat. 13 provided that "any person who, under color of any law, statute, ordinance . . . of any state, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any right, privileges or immunities secured by the Constitution of the United States, shall . . . be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress." And it directed that such proceedings should be prosecuted in the several district or circuit courts of the United States. The right of action given by this section was later specifically limited to "any citizen of the United States or other person within the jurisdiction thereof," and was extended to include rights, privileges and immunities secured by the laws of the United States as well as by the Constitution. As thus modified the provision was continued as sect. 1979 of the Revised Statutes and now constitutes sec. 43 of Title 8 of the United States Code, U. S. C. A. Sec. 43.

It will be observed that the cause of action, given by the section in its original as well as its final form, stands broadly to deprivation by state action of the rights, privileges and immunities secured to persons by the Constitution. It thus includes the Fourteenth Amendment and such privileges and immunities as are secured by the due process and equal protection clauses, as well as by the privileges and immunities clause of that Amendment. It will also be observed that they are those rights secured to persons whether citizens of the United States or not, to whom the Amendment in terms extends the benefit of the due process and equal

protection clause. Supreme Court of the United States. In re: Hague v. Committee of Industrial Organization, 307 U. S. on page 968.

The jurisdiction of the court below existed, but, in order to exercise it, the defendants must be brought before the court. U. S. v. Virginia-Caroline Chemical Co., 163 Fed. 66; U. S. v. Standard Oil Co. 154 Fed. on p. 730. It became necessary for me to apply to the Court (See pp. 1-2 of Declaration) for the benefits provided by Sec. 716 of the U. S. Rev. Statutes (377 U. S. C. A. 28), Sec's 5, 15, 22, and 26 of Title 15 U. S. C. A., and Sec.. 729 U. S. C. A. 28. Upon my said Application made so by me the Court issued the Summonses as it is usually done in all other cases and delivered them to me with instructions to send them to the United States Marshal's respective district to be served by them.

That Congress may, in the exercise of its legislative discretion, fix the venue of a civil action in a federal court in one district and authorize the process to be issued to another district in which the defendant resides, or is found, is not open to question. Mr. Justice Sanford in Re: Eastman Kodak Co. of New York v. Southern Photo Material Co., 273 U. S. 373, 405, 47 S. Ct. 400.

"All Writs not Specifically Provided For By Statute." R. S. Sec. 716 (377 U. S. C. A, 28). Purpose of Section.—This section vests the federal courts with power to issue all writs not specifically provided for which may be necessary for the exercise of their respective jurisdictions and agreeable to the usages and principles of law. Murry v. Patrie, Fed. Cas. No. 967; Western Pocahontas Corporation v. Acord, 178 F. 843; John Gund Brewing Co. v. U. S. 204 F. 17, 122 C. C. A. 331.

The statute was no doubt enacted by Congress in order to meet cases where there is no specific process provided by Statute. John Gund case supra: This section is construed as a process provision. U. S. v. Philadelphia, etc. R. Co., 237 F. 292.; In cases where jurisdiction already existed. U. S. v. Plumber, 3 Cliff. 28, 27 Fed. Cas. No. 16,056.

(THE U. S. DISTRICT COURTS DENY CIVIL RIGHTS)

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Cases in Which Nicholas J. Curtis Is or Was a Party

Number	Name	Date Filed	Date and How Terminated
E-2331	Nicholas J. Curtis vs. American Telephone & Telegraph Co., et als	2/7/27	6/11/29 Order dismissing case without costs
E-4129	Nicholas J. Curtis vs. Citizens National Bank & Trust Co., et als	10/25/30	6/7/37 Order dismissing case pursuant to General Rule 27
E-5109	Nicholas J. Curtis vs. Minas Candaras, &c., et al	3/29/35	6/24/35 Order dismissing case with costs to defendants
L-1722	Nicholas J. Curtis vs. Paramount Famous Lasky Corp., et als	9/19/28	10/28/28 Order dismissing case
L-4628	Nicholas J. Curtis vs. Nicholas J. Pappas, &c., et al	8/6/34	9/24/34 Order striking out complaint with costs to defendants
L-4759	Nicholas J. Curtis vs. Nicholas J. Pappas, &c., et al	10/8/34	11/21/38 Order dismissing case pursuant to Rule 27
L-5773	Nicholas J. Curtis vs. Utah Fuel Company	11/6/36	12/24/36 Order granting motion to strike complaint and dismissing motion for rehearing
Civil 728	Nicholas J. Curtis vs. Utah Fuel Company, et als	1/12/40	Pending

(MEMORANDUM of the matters involved (U. S. Supreme Court Rule 38, 2.) in the cases cited above and some of the reasons relied on for the allowance of the Writ.

E. 2331. The plot is dramatized and the Pathe Exchange, Inc. and Paramount Publix appear as distributing Agencies and an attempt was made to expose the plot and stop them. The same case as E40-201, U. S. Dist. Ct. Southern Dist. of New York. In New York the defendants took out several orders requiring me to put up security for costs in the sum of $750.—or more and I was unable to put up the bond. Which case please see. The Pathe Exchange, Inc., through James J. Cannon its attorney came to me and asked me to settle the case out of court. I could not bear it to receive and eat out of money from the case OUT OF COURT BECAUSE I consider the plot to be too seditious and for that matter I answered to Mr. Cannon's proposition and said "No." Thereafter Judge Knox entered a memorandum order directing the Clerk of the Court to "do not receive any more papers from me.

Judge Bodine of U. S. Dist. Ct. Dist. of New Jersey ordered me to go ahead and go on trial without any Court Order and I went to the State of Utah to take Depositions. There the defendants held me up and took my automobile away from me. See Curtis v. Syphus & Curtis v. Pathe Exchange, Inc. Dist. Ct. of Carbon County, State of Utah. Thereafter Judge Clark refused to proceed any further. Thereupon I applied to the C. C. of A. 3rd C. by Application for a Writ of Mandamus praying for a Writ of Mandamus to Issue Out of that Court directed to the Hon. William Clark (now Circuit Court Judge 3rd C.) and to Hon. William Runnyon, Judges of the Dist. Ct. of the U. S. Dist. of New Jersey. The C. C. A. 3rd C. without more changed the Application for Writ of Mandamus to Two Appeals. N. 4193, and No. 4194, charged $80.00 Docket fees and proceeded and dismissed the Appeals.

E. 4129. Under the National Bank Act. Fake, J., I done everything I could do to proceed to trial. See the case and

see Curtis vs. Demis, 4th Judicial Dist. Ct. of Bergen County; Village of Ridgewood vs. James Demis, in Chancery of N. J.

E. 5109. The plot and the conduct of the Courts became so well known as to tackle almost any and all persons to take advantage and defraud me. Fake, J. dismissed my case with costs. Thereupon I took out a rule to show cause before Jerome Dunn, Commissioner of New Jersey. After Notice and hearing had defendant's attorney, L. Rosenberg, after failing to have the Commissioner jail me, paid the full amount I sued for.

L. 1722. Same case as the 1st above over the automobile and damages.

L. 4628. After discovering that the defendant Harry Sussman is not dead but is living I attempted to proceed as to those parties residing in New Jersey under Sec. 47 of Tit. 28 U. S. C. A. Clark, J. dismissed my case upon the malicious attacks of William Rosenkrans defendant, and as attorney for all others sued. Thereupon I filed an Affidavit of Bias and prejudice against Judge Clark which please see. Thereupon I wrote to Hon. William P. Rowland, Clerk C. C. A. 3rd C. of what chances I had to appeal the case in one way or the other and Mr. Rowland answered saying that it seemed to him that it would be unwise to spend any more money as that his court most likely will deal with that case as it did with the others. No Appeal.

L. 4759. Judge Clark refused to answer my Affidavit of Bias and Prejudice and I filed second complaint to go before another judge, Fake, J. I done all I could do and I appealed to the Clerk and to the Court and pleaded to proceed. Witnesses within the Dist. of N. J. ready to testify. See pp. 104-114 Typed Record. The Court refused to proceed. I received Notice to dismiss under Gen. Rule 27 (want of prosecution) and I made Affidavit opposing the dismissal and took it and went to the Court before Judge Fake. Submitted my Affidavit and argued that I be permitted to proceed to trial. Judge Fake denied me the right to pro-

ceed to trial and thereupon dismissed my case for not going on trial. See the Record.

L. 5773. The defendant, Utah Fuel Company and its officers and agent hired H. Collin Minton, Jr. to commit corruption by offering and promising to Judge Phillip Forman judicial promotion if he would dismiss the case and arrest and imprison me in violation of Section 237 of Title 28, U. S. C. A:

Offenses Against Public Justice. Whoever, directly or indirectly give or offer, or cause to be given or offered, any money property, or value of any kind, or any promise or agreement therefore, or any other bribe, to any judge, judicial officer, or other person authorized by any law of the United States to hear or determine any question, matter, cause, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision thereon or because of any such action, vote, opinion, or decision, shall be fined not more than $20,000, or imprisoned not more than fifteen years, or both; and shall forever be disqualified to hold any office of honor, trust, or profit under the United States. (R. S. Sec. 5449; Mar. 4, 1909, c. 321, 25 Stat. 1112) See page 14 of the Record of Pleadings; pages 33-34 of the Complaint.

On the Return Day of their Motion to Dismiss my complaint, on the 11th day of December, 1937, in the presence of: 1. Hon. Phillip Forman, Judge Sitting as a Court for the Hearing of Motions; 2. Hon. Charles S. Chevrier, Deputy Clerk of the Dist. Ct. of the U. S. Dist. of N. J.; 3. Hon. Benjamin F. Havens, Deputy Clerk of said Court; 4. Two Deputy Marshals attending the Court; and 5. One or Two attorneys, the defendant H. Collin Minton, Jr. argued to Judge Phillip Forman as follows: (See the Parts of the argument on the pages just cited above here.)

William H. Folland is a justice of the State Supreme Court of the State of Utah and the proceeding would be against that judge. Judge Phillip Forman. They put him there for putting him (pointing out myself) out of the way.

H. Collin Minton Jr., Yes, they do that. They do those

things. They will do the same thing with you. Dismiss his case and put him in. They will not stand to see him . . .

Judge Phillip Forman. I refuse to sustain you. Just now you said that they put him there for putting him out of the way and now you are asking me to put him in. I refuse to sustain you. We cannot put him in. We have papers here . . ., and we cannot put him in. He is the best customer here.

H. Collin Minton, Jr. I just tell you these because I know you. Etc.

I did not plead these in the 2 courts below because I deemed it useless to do so.

Thereupon my case was dismissed. Upon receiving the Order dismissing my case I issued and filed a Motion for rehearing. Immediately after filing this said motion I applied to the C. C. A. 3rd C. by Application under sections 17-25, Title 28, U. S. C. A. praying that an unbiased and unprejudiced judge be designated and assigned to exercise the court's jurisdiction and proceed to trial. The C. C. A. 3rd C. changed my Application for Designation of another judge to an appeal and without more proceeded and dismissed its Appeal. Thereupon I filed a petition for rehearing and the Court dismissed it without even notice of its hearing to me. See its Decision on page 110 of Declaration.

Civil 725. Pending. See Document Index and Docket Entries from part of typed Record. Notice of Motion re: Utah Fuel Co. and H. Collin Minton, Jr.

Special Appearance added to the Notice of Motion for or on behalf of the defendants Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Maybe (Charles R. Maybe), and W. D. Sutton. See page 6 of the Record of Pleadings. All others who are residing in Utah and in Washington, D. C. are in default of a pleading. Filed April 16, 1940, and made returnable before Judge Phillip Forman.

According to the understanding reached between H. Collin Minton, Jr. and Judge Phillip Forman these said stated defendants disregarded the Federal Rules (See pp. 7-12 of

Record.) of Civil Procedure for the District Courts of the United States and proceeded to try this case also on their might, offers, and deception.

On receiving my copy of said Notice of Motion and Special Appearance I issued a Praecipe (see page 33 typed Record.) and took it and went to Trenton, N. J. and presented it to the Deputy Clerk, Mr. Chevrier, and demanded that it be filed and that my case will not, under any circumstances, be sent to be heard before Judge Forman. I received his promise that it will not be so sent but that it will be heard before Judge Walker. My protest and the filing of the Qualifications Praecipe did not help me very much because the motion calendar was made up at Trenton in one Document for the two judges, Forman and Walker, and the two judges sitting together as a Court of two Judges for the Call of the Calendar. There they discussed my case and Judge Forman gave Judge Walker his instructions. The Special appearance and Notice of Motion is not permitted by the Federal Rules because the court already (F. R. 8 (a) had jurisdiction. See Curtis vs. Utah Fuel Co. et als, N. 5547, U. S. Dist. Ct. D. of Utah, page 19 of Record.

The U. S. Marshal (see page 1 of Record) returned as to the defendants Dr. Fred. W. Taylor and Dr. Paul "unknown." There is no statement made in the said Notice of Motion and Special Appearance as to these doctors. See pp. 2-6 of Typed Record.

Notice of Motion re Utah Fuel Co. and H. Collin Minton, Jr. and Special Appearance, as aforesaid, were heard and submitted on May 6, 1940. Federal Rule 12 (g). If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on any of the defenses or objections so omitted . . .

On May 2, 1940, I filed Application for Entry of Default against Dr. E. R. Murphy and Charles W. Kutz. See page 33 Typed Record.

On May 4, 1940, I filed Application for Entry of Default against Mark Tuttle. See page 34 of the Record. See Clerk's Certificate page 125. There is no objection on the Record. See Stenographic Transcript on hearing of Motion and Special Appearance on May 6, 1940.

On May 16, 1940, I filed Amendment to Original Complaint to change the names of Dr. Paul and Dr. Taylor. See pp. 25-37. On May 20, 1940, I filed Notice of Motion to Substitute the Bamberger Coal Co. See pp. 39-47, Record.

On May 22nd, 1940, the U. S. Marshal for the Dist. of Utah returned Summons served on Dr. Leslie J. Paul, personally and on Bamberger Coal Co. by serving William D. Eldridge, Vice Pres.; and on Dr. Frederick Taylor, personally May 28th, 1940, filed June 3, 1940. See page 49. These would mean that Dr. Leslie J. Paul was served with Summons and Complaint 16 days after the hearing on Notice of Motion and Special Appearance re Utah Fuel Co. et als Dr. Frederick Taylor was served with Summons and copy of the Complaint 22 days after the hearing on Notice of Motion and Special Appearance. The parties are required (F. R. 15 (a); Writ of Summons; F. R. 12 (a); (h); Fed. Rule 15, and the Prayer of the Amendment to the complaint, to wit: 3. That the said two defendants be required to answer both this Amendment to the Original Complaint; and the Original Complaint.). There were no Answer or other pleading filed. Absolutely no pleading filed by or in behalf of these doctors. To the same effect as to the Bamberger Coal Company. See Stenographic Transcript of June 10, 1940.

On June 17, 1940, I filed my Application for Entry of Default against the defendants, Dr. Taylor, Dr. Paul, and Bamberger Coal Co. See page 50.

Although the district Judge (See page 9 Stenographic Transcript, July 8, 1940) stated to me that my application for a default judgment have to wait the Court's decision on the Motions to strike the complaint, the Clerk of the Dist. Court received my Applications for Entries of De-

fault (See pp. 33, 34, 50 of the Record) and refused to enter them keeping his refusal to himself up to the 23rd day of October, 1940, when I waited and pleaded for copies of them for three days till I had to go to the C. C. A. 3rd C. and obtain copies. The Originals he concealed them. See pages 121 and 125.

The defendants have control of the Clerk and hence control of the Clerk's Office and the Deputies have had no saying. The Clerk practices law for the defendants and keeps it a secret.

In the Circuit Court of Appeals Third Circuit the defendants Utah Fuel Company and H. Collin Minton, Jr., were improperly (Fed. Rule 12 (g)—he shall not thereafter make a motion based on any of the defenses or objections so omitted—) permitted to file and filed the following Memorandum:

MEMORANDUM OF APPELLEES

COUNTER-STATEMENT OF QUESTION INVOLVED

Can this Court reverse or modify the action of the District Court in reserving decision on application of plaintiff for default judgment against stated defendants who have been improperly served outside of the District?

STATEMENT OF THE CASE

The principal defendant and real object of the plaintiff's attack is, of course, the Utah Fuel Company. The some twenty-odd others named as defendants are allegedly associates and agents of Utah Fuel Company, who participated in the alleged conspiracy against the plaintiff. In so far as Utah Fuel Company, the principal in this litigation, is concerned, the only defendants who were properly served within the State are Utah Fuel Company and H. Collin Minton, Jr., and a motion to dismiss the complaint was made in their names for the "defendant-company and its agents and associates." The fact that the phrase "defendant-company

and its agents and associates" is set out six times in the motion to dismiss conclusively proves that it was filed for the twenty-odd improperly served alleged agents and associates as well as for Utah Fuel Company, the principal, and H. Collin Minton, Jr.

(The Clerk's Certificate attached hereto shows that twenty-three named defendants who allegedly acted for Utah Fuel Company were served outside the District of New Jersey contrary to the provision of Rule 4 of the Federal Rules of Civil Proceedings.)

Subsequent to the drafting of the motion to dismiss, on special instruction from the attorney in Utah, Mr. Minton drafted a special appearance in behalf of Dr. Frederick Dunn, Dr. A. C. Callister, Dr. D. E. Smith, Charles E. Maybe and W. D. Sutton to quash service of the subpoena made upon said defendants. The Court, however was advised by Mr. Minton, that Mr. Minton represented all defendants not represented by other counsel, which include all of the appellees named in the caption of this cause.

ARGUMENT OF APPELLEES

The basis of the motion to strike the complaint is due to the impossibility of framing an answer to the complaint by reason of its vague, indefinite, incoherent and unrelated allegations and scandalous nature. The Court not having ruled on the application to strike the complaint, the matter was properly held in abeyance. In other words, on account of the factual basis for the motion made in the District Court, it would be impossible to prepare answers.

The appendix attached hereto indicates that decision was reserved on all motions of both plaintiff and defendants.

It is submitted therefore that this appeal should not be considered by this Court.

Respectfully submitted,

H. Collin Minton, Jr.,
Attorney for Appellees.

H. Brau Campbell,
of Counsel.

Defendants' Memorandum and Argument contain statements intended to be used by them as steps towards the execution or part execution of the conspiracy set forth in the Complaint and following pleadings.

As to the so called Counter Statement of Question Involved—for default judgment against stated defendants who have been improperly served outside the District—

On the 19th day of April, 1924, Dr. Frederick W. Taylor, defendant, in the presence of C. W. Simons, Federal Railway Administrator, in the City Office of the U. P. System at Salt Lake City, in the State of Utah, issued and signed the Certificate which is made a part of the 20th Count of the Complaint and is set out on the 29th page.

The Original as signed has been submitted to Judge Walker. The defendant, Dr. Taylor, sealed it and handed it to me advising me that "it will carry me through to New York City, U. S. A. and from there on through out the Seas to my home in Greece. At the same time, place, and office he bought "interstate and foreign Commerce train and steamship tickets and handed them to me and ordered me off and out of the State of Utah and the United States of North America; and to take the first train out of the State of Utah and keep on going out of the United States and gave me to understand that if I refuse to proceed and carry out his instructions, he will cancel his said certificate, rearrest me, and imprison me for life. I have had to carry out the sedicious instructions because of the martyric deaths and conditions which were taking their toll. "To get away from the strait-jacket." To get out to safety and civilization. He and his associates in crime intended the sedicious instrumentality to carry me through the Interstate and foreign Commerce to cover their sedicious and criminal acts. They intended to use the interstate and foreign Commerce to defeat the ends of justice and the due course of the administration of the laws. They plotted to use and did use the interstate Commerce to cover their sedicious acts. They reinforced said deadly instrumentality

and the Railroad and Steamship tickets with threats of revocation of said Certificate, confiscate transportation tickets, re-arrest me and imprison me for life. They said to pieces with the United States Interstate Laws; and to pieces with United States Laws governing Foreign Commerce. "We can lie." Their plot failed them. At Denver, Colo. the tickets were confiscated. I was rearrested and thrown into the City Jail. The local authorities refused to prosecute me any further. Their said Certificate worked its way and covered the sedicious conspiracy till I have had to compile all that I have compiled and annexed to my present Complaint in order to tie up their hands and expose the conspirators. They knew what they were doing. They knew that by doing so they were violating the laws of the State of Utah (R. S. of Ut. 103-11-1; 103-11-3; 105-32-11;). They knew that they were violating the Laws of the United States of America (Title 15, Sections 1, 2, Etc.; Title 28, Sec. 103). The part of the conspiracy they played by the use of the defendants Charles W. Kutz, Fay and Hazen, now unknown, is just as sedicious.

To this day the conspiracy is partly carried on from the headquarters of the defendant Utah Fuel Co. at Salt Lake City, Utah, (See 3rd par. of their Statement of the Case) and partly from Jersey City, New Jersey. See pp. 33-34 of the Complaint; page 14 Point (k) of Record; plus the offer to buy the decision.

Section 103 of Title 28, U. S. C. A. covers every foot of American soil and applies to and governs all cases civil as well as criminal. Sec. 729, Title 28, U. S. C. A.

In Reese v. United States, 99 F. 2nd. 753 the Circuit Court of Appeals 4th Circuit says:

The court, however, rejected the contention (that the crimes, if any were committed, took place in Pittsburg and not in Wheeling, W. Va.) on the ground that the applications, although not filed, were prepared by the defendant in West Virginia. The court was of the opinion that the indictment charged offenses begun in one district and com-

pleted in another, and therefore fell within the purview of section 42 of the Judicial Code, 28 U. S. C. A. Sec. 103, which provides that when any offense against the United states is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be tried and punished in either district in the same manner as if it had been actually and wholly committed therein.

This statute is particularly applicable to the jurisdiction over crimes which consist of two or more distinct elements or acts that may be committed in different districts, such as the crimes of conspiracy which, under the federal statute, consist not only of the unlawful agreement, also of the commission of any overt act in furtherance thereof. Indeed the statute was originally a part of the statute with reference to conspiracy. (Tit. 15 Sec's 1, 2, 5 etc.) It is established that jurisdiction of the crime of conspiracy lies either where the unlawful agreement was made or where any overt act took place. Hyde v. Shene, 199 U. S. 62, 25 S. Ct. 760, 5 L. Ed. 90; Haas v. Henkel, 216 U. S. 462, 30 S. Ct. 249, 54 L. Ed. 569, 17 Ann. Cas. 1112; Hyde v. United States, 225 U. S. 347, 32 S. Ct. 793, 56 L. Ed. 1114, Ann. Cas. 1914 A. 614; Grayson v. United States, 6 Cir., 272 F. 553; Grigg v. Bolton, 9 Cir. 53 (2nd) 158 (See also United States v. Freeman, 239 U. S. 117, 36 S. Ct. 30, 60 L. Ed. 172; United States v. Alaska Cons. Canneries, 2 F. 2nd. 614; United States v. J. L. Hopkins & Co. 199 F. 649; In re Becker 100 F. 295; Smith v. United States, 288 F. 44; Putnam v. United States, 162 U. S. 687, 708, 16 S. Ct. 923, 40 L. Ed. 1118; Simpson v. United States, 229 F. 940. Cases cited on Note under Sec.

The statute is often invoked to establish jurisdiction over crimes which involve the mailing of a letter from one district to another, as in the presentation of a fraudulent (Certificate) claim to a government official. Thus in Bridgman v. United States, 140 F. 577 and U. S. v. Downey, D. C. 257 F. 366, it was held that the offense was commenced and there-

fore triable where the letter was mailed; and in Benson v. Henkel, 198 U. S. 1, 24 S. Ct. 569, 49 L. Ed. 919, and in re Pallier, 136 U. S. 257, 10 S. Ct. 1034, 24 L. Ed. 514, the offense was held cognizable where the letter was received. The principle on which jurisdiction is established over crimes which begin in one district and end in another is enunciated in United States v. Lombardo, 241 U. S. 73, 77, 36 S. Ct. 508, 510, 60 L. Ed. 897, as follows:

"Undoubtedly where a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done; or where it may be said there is a continuously moving act, commencing with the offender and hence ultimately consummated through him, as the mailing of a letter; or where there is a confederation in purpose between two or more persons, its execution being by acts elsewhere, as in conspiracy."

See also Smith v. United States, (C. C. A. 9th C. 92 F. 2nd 460, (1-3) on p. 461.

I deem it unnecessary to compile any other and further decisions and say that the case quoted above, as well as all those cited therein, as well as those cited and set out in my Brief and My Petition of which this Memorandum is a Part, sustain my case, and in addition thereof their intent to violate Section 2 of Title 15 U. S. C. A. In cases of the nature of the one before the Court the Federal Jurisdiction of the District Court is the same in civil and Criminal matters. Section 729, of Title 28 U. S. C. A., Sec. 729 on page 7 of Record. There is no exception to be found in the reported cases. The Statute is thus construed by this Court in all its decisions and by the lower Courts in all their decisions. The Statute is a just law otherwise the victims will be dumped from State to State and so on and those who do the dumping avoid punishment.

The defendants in the cause before the Court have had committed an outrage in the District of Columbia and were unable to clear their way out of it. There they called in Wil-

liam J. Fay and William J. Hazen (now disappeared and no Record of them) and placed in their hands the files and Records of the case of Curtis vs. Utah Fuel Co. et als. No. 5547 U. S. D. Ct. D. of Ut., and they transported them to Salt Lake City, Utah, and placed them in the Hands of William H. Folland, Defendant, and Ferdinand Ericksen, Chief Counsel of the Defendant Utah Fuel Company. The four and others made them the bases of a Criminal Information against me and placed me on trial because of the proceedings in the U. S. Courts. Please see the Complaint and Opposing Affidavit, pp. 7-31 of Record. See pp. 8,-9,-10 of this Memo.

Wilbur, Circuit Judge, in Mitchell v. Greennough, 100 F. 2nd 184, Says:

The appellant predicated jurisdiction upon an alleged cause of action under legislation enacted by Congress during the reconstruction period (Act April 20, 1871, Ch. 22, Sec's 1, 2, 17 Stat. 13) and now embodied in the United States Code (8 U. S. C. A. Sec's 43, 47). The latter section (47) expressly authorizes an action for the recovery of damages. Such an action, unless the claim made is purely colorable, is an action based upon the laws of the United States as to which the Federal Courts have jurisdiction. Sullivan v. Felix, 5 Cri., 194 F. 88, Id. Affirmed, 233 U. S. 318, 34 S. Ct. 596, 58 L. Ed. 980; McClaine v. Rankin 197 U. S. 154, 25 Sup. Ct. 410, 49 L. Ed. 702, 3 Ann. Cas. 500; Smith v. Kansas City Title & Trust Co., 255 U. S. 180, 41 S. Ct. 243, 65 L. Ed. 277, See the Reported case Campbellsville Lumber Co. v. Hubbert, 112 F. 718, 50 C. C. A. 435, judgment affirmed Hubbert v. Campbellsville Co., 24 S. Ct. 28, 191 U. S. 70, 48 L. Ed. 101. The Court Says: p. 724.

An attentive consideration of the principle of statutory construction here involved leads us to conclude that when a Statute gives a new and unusual remedy, (Sec. 103, Tit. 28, U. S. C. A.) and directs (Sec. 103, Tit. 28, U. S. C. A.) how the right to the remedy is to be acquired or enjoyed (Sec. 103, Tit. 28, supra), and how it is to be enforced (Sec. 103, Tit. 28), the Act should be strictly construed; and the valid-

ity of all acts done (Sec. 103, Tit. 28) under authority of such an act will depend upon a compliance with its terms. In respect to such acts the steps pointed out for the acquisition, preservation, and enforcement of the remedies provided should be construed as mandatory, rather than optional. Such St. Const. Sec's 454, 458, and cases cited; Atkins v. Kinnan, 20 Wend. 241, 249, 32 Am. Dec. 534; Davison v. Gill, 1 East. 64; Frence v. Edwards, 13 Wall. 506, 20 L. Ed. 702; Lyon v. Alley, 130 U. S. 177, 9 Sup. Ct. 480, 32 L. Ed. 899.

Southern Surety Co. v. United States, 23 F. 2nd. 55. C. C. A. 8th C. Sanborn, J. on page 60 (11-12).

One of the cardinal rules for the construction of a statute is that it must be given a rational, sensible construction, and that, if this be consonant with its terms, it must have the interpretation which will advance the remedy and repress the wrong. Stevens v. Nave-McCord Mercantile Co. (C. C. A.) 150 F. 71, 75; United States v. Ninety Nine Diamonds (C. C. A.) 139 F. 961, 965, 2 L. R. A. (N. S.) 185 and cases there cited.

Where, as here, the language is susceptible of a construction which preserves the usefulness of the section the judicial rests upon this Court to give express to the indentment of the law. United States Supreme Court in Armstrong Paint & Varnish Works v. Nu Enamel Corporation, 305 U. S. 315-336, (10).

It follows that there is no merits on the Counter Statement of the Question Involved so framed by the defendants and their attorneys.

There is no merits also on the first paragraph of their Statement of the Case. The paragraph so framed is deceptive and false. Three of the defendants in default were not even served with summons and copies of the complaint. With the Exception of Dr. E. R. Murphy, the co-defendants are not agents and associates of the Utah Fuel Company. They are co-partners in crime. May it please the Court see Steno-

graphic Transcript on Hearing on Motion of May 6, 1940.

The statement (the only defendants who were properly served within the State are Utah Fuel Company and H. Collin Minton, Jr.) which is found on lines 7-8-9 is also deceptive. Please see the Caption of the Complaint. Harry Sussman is hiding and was not served.

The statement (The Court, however was advised by Mr. Minton, that Mr. Minton represented all defendants not represented by other counsel, etc.) is also deceptive and false. May it please the Court see Stenographic Transcript on Hearing of May 6, 1940. He who calls himself Mr. Minton therein is H. Collin Minton, Jr., who made the promise to Judge Phillip Forman of Judicial Promotion if he would dismiss the suit before him and jail me. See pages 3-4 above. This he framed it up on the hearing of the Application for Default Judgment. See Steno. Transcript of July 8, 1940. Fed. Rule 12, (a) and (g). It follows that there is no merits in the third paragraph of their Memo.

The statement (were served outside the District of New Jersey contrary to the provision of Rule 4 of the Federal Rules of Civil Proceedings.) which is found on par. two of their Statement of the case is also without any merits because Federal Rule 4 (d) (7) provides: it is also sufficient if the summons and complaint are served in the manner prescribed by any statute (Section 103, Title 28, U. S. C. A.; Sections 1, 2, 4, 5, 15, 22, 26, Title 15, U. S. C. A.) of the United States or in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

Now of that State of Utah:

The United States Marshals and their deputies have, in each State, the same powers, in executing the laws of the United States as the Sheriffs and their deputies in such State may have by law in executing the laws thereof. Section 504, Title 28, U. S. C. A.

Revised Statute of Utah. 104-5-3. Id. Service—Who may Serve—Return.

The summons, together with a copy of the complaint, if any, may be served by the Sheriff of the county where the defendant may be found, or by any other person over twenty-one years of age and not a party to the action. The officer or other person serving a summons shall make due return thereof, within five days after service, to the person whose name is subscribed thereto. (C. L. 17, Sec. 6540.)

The Supreme Court of the State of Utah construes this said Statute (104-5-3-R. S. Ut.) as follows:

Straup, J. We are also of the opinion that the court erred in sustaining the demurrers. There is nothing appearing on the face of the complaint from which it can be said that the defendants were not subject to the process and jurisdiction of the court. A demurrer for want of jurisdiction of the person raises only the question as to whether the defendant is such a person as can be subjected to the process and jurisdiction of the court. The court having jurisdiction of subject-matter acquires jurisdiction of a defendant either by his voluntary appearance or by process served upon him. The statute provides that the summons and a copy of the complaint may be served "where the defendant may be found." Continental Life Ins. and Inv. Co. v. Jones, 31 U. 403, 88 P. 229.

104-5-4. Id. On defendants residing in different Counties. Where there are several defendants residing in different counties, separate summons may be issued and served on the defendants residing therein. (C. L. 17, Sec. 6541.)

104-5-5. Id. Time of Service—Alias Summons. If an action is commenced by the filing of a complaint with the clerk, summons must issue thereon within three months from the date of filing. If a summons is returned without being served upon any or all the defendants, another summons may be issued and served at any time within one year after the filing of the complaint. (C. L. 17, Sec. 6542.)

104-5-7. Id. Time of Service to be Indorsed on Copy.

104-5-8. The voluntary appearance of a defendant, or a written acknowledgment of service of summons upon him, shall be deemed valid and sufficient service. . . .

104-5-10. Objection to the summons, or the service thereof, or proof of service thereof, may be taken by motion on behalf of the defendant, particularly specifying the objection. . . .

104-5-11. Manner of Serving Summons.

The summons must be served by delivering a copy thereof as follows: (5). If the defendant is a domestic corporation, to the president or head of the corporation, secretary, treasurer, cashier or managing agent thereof.

(8) In all other cases, to the defendant personally, or by leaving such copy at his usual place of abode with some suitable person of at least the age of fourteen years.

104-5-18. Jurisdiction, When Acquired.

From the time of the service of the summons or the filing of the complaint in a civil action the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings. (C. L. 17, Sec. 6559.)

"In the manner prescribed by any statute of the United States." Section 103, Tit. 28, U. S. C. A. is a statute of the United States and prescribes the manner of dealing with the defendants in the manner of "as if they were all present within the State of New Jersey."

For offenses, overt acts to a conspiracy, committed within the Territorial Limits of the District Court of the United States for the District of New Jersey, in violation of Sections 52, 54, and 88 of Title 18 (See page 115 of Record) there is no Territorial or State Limits to the jurisdiction of the said Federal Court. None whatsoever. Not even National. For such overt acts please look to the cases cited above.

It is fundamental that jurisdiction in criminal matters rests solely in the courts of the United States within and for the District of New Jersey in which district the crimes have been and are committed. R. C. L. Vol. 5, XII. Crimes. Sec. 121. Citing: Huntington v. Attrill, 146 U. S. 657, 13 S. Ct. 224, 36 U. S. L. Ed. 1123; Brown v. United States, 35 App. Cas. (D. C. 548, Ann. Cas. 1912A, 388); Steard v. Jessup, 51 Ind. 413, 19 Am. Rep. 739; State v Kelley, 76 Me.

331, 49 Am. Rep. 620; State v. Kief, 12 Mont. 92, 29 Pac. 654, 75 L. R. A. 722, and others; and that the laws of each state or country exclusively govern the nature of the offense. Huntington v. Attrill, 146 U. S., see supra; In any case the nationality or citizenship of the offender is immaterial. He is subject to all respects, to the law of the country within which the crime is committed. State v. Chapin, 17 Ark. 561, 65 Am. Dec. 452; Reg. v. Anderson, L. R. I. C. C. 161, 38 L. J. M. C. 12, 19 L. T. N. S. 400, 17 W. R. 208, 11 Cox C. C. 191, 8 Eng. Rul. Cas. 1.

In many cases, as for instance conspiracy, requisite elements of completed crime may be committed in different jurisdiction. In such case any state in which an essential part of the crime is committed may take jurisdiction. Ex. Parte Rogers, 10 Tex. App. 655, 38 Am. Res. 654.

Title 15, Sec. 4. U. S. C. A. Jurisdiction of Courts. . . . procedure. The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7, inclusive, or section 15 of this chapter. July 2, 1890, c. 647, Sec. 4, 26 Stat. 209; Mar. 3, 1911, c. 231, Sec. 291, 36 Stat. 1167.

Title 15, Section 5. Bringing in Additional parties. Whenever it shall appear to the Court before which any proceeding under section 4 of this chapter may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof. (July 2, 1890, c. 647, Sec. 5, 26 Stat. 210.) Prosecutions under sec's 4-5 above is suppressed by the defendants. The struggle is left to me to be thrown out from court to court. The statute provides "whether they reside in the district of New Jersey or not."

Section 22, Tit. 15, U. S. C. A. District in which to sue corporation. Any suit, action, or proceeding under the anti-trust laws against a corporation may be brought not only in the district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all

process in such cases may be served in the district of which it is an inhabitant, or whereever it may be found. (Oct. 15, 1914, c. 323, Sec. 12, 38 Stat. 786.)

Section 15. Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefore in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fees. (Oct. 15, 1914, c. 323, Sec. 4, 38 Stat. 731.) The above sections 4, 5, 15, and 22 are statutes of the United States and provide the manner by which service of summonses may be made. (Federal Rule 4, (d) (7) following Act of June 19, 1934, c. 651, Sec's 1, 2, (48 Stat. 1064) U. S. C. Title 28 Sec's 723b, 723c.)

(e) SAME: OTHER SERVICE. Whenever a statute of the United States or an order of court provides for service of a summons, (Section 103 of tit. 28, U. S. C. A. directs that the case should be dealt with the usual and ordinary Federal Procedure used in cases arising wholly and actually within the District of New Jersey) or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, service shall be made under the circumstances and in the manner prescribed by the statute, rule, or order. (The manner prescribed by Section 103 is the same as that of offenses have had been actually and wholly committed therein the District of New Jersey); And—whether they reside in the district in which the court is held or not; Sec. 5 above; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found; Sec. 22; in which the defendant resides or is found, Sec. 15; when a statute of the United States so provides, beyond the territorial limits of that state.

There is a constructive presence of the defendants in the suit in the State of New Jersey, distinct from their personal presence, by which crimes committed by them in other States, In the State of Utah, New York, and the District of

Columbia, are consummated in the State of New Jersey (See my cases as set forth in the Memo. from the Clerk's Office) and render the defendants who are consummating their said crimes punishable and answerable at the District of New Jersey. Hyde v. United States, 225 U. S. 347, and cases in point. And see Benson v. Henkel, 198 U. S. 1, 49 L. Ed. 919.

The Supreme Court, and the District Courts have power to issue all writs not specifically provided for by statute which may be necessary for the exercise of their respective jurisdiction, and agreeable to the usages and principles of law. Rev. St. Sec. 716; Sec. 377, Tit. 28, U. S. C. A.

This statute was enacted in 1789, and stands now as amended in 1793. The language used here is broad and general. It would seem that it was intended to cover all cases not otherwise specifically provided for by Congress. In my judgment it is authority for the issuance and service of the process as has been done in this case. (Section 103, Title 28 follows here). United States v. Standard Oil Company, 154 Fed. on page 730; United States v. Virginia-Carolina Chemical Co. 163 Fed. 66. See Parts of Decisions pp. 128-131 of the Record.

The Federal Court within and for the District of New Jersey has jurisdiction of the cause and over the defendants. By virtue of the provisions of Section 103 of Tit. 28, and the Sec's of Tit. 15, U. S. C. A. I have the right to resort to that venue. Cohen v. Saddlemire, 26 Fed. Supp. 27.

It follows that there is no merits in the Counter-Statement of the defendants, Utah Fuel Company, et als; nor in their statement of the case par. 2; nor in the Clerk's certificate (page 125 of Record). The Clerk of the District Court acts ministerially and has no power or authority to construe the Statutes quoted above. The Clerk has no right, power or authority to practice law and refuse to file the pleadings he receives and destroy them in behalf of the defendants in default. Fed. Rule 5 (e) The filing of pleadings and other papers with the Court as required by these rules shall be made by filing them with the clerk of the court, . . . The

Sec's of The Revised Statute of Utah which are quoted above are as clear as they can be made and sanction the process, issuance, service thereof; and jurisdiction acquired thereof by the acknowledgment of service of summons and complaint upon them.

Similar provisions are provided by Clevenger's Sup. Ct. Practice (New York Civil Practice Act, and the Code of the District of Columbia in which Districts a defendant was served. See pp. 65, 66, 67 of the Record as to Carol C. Johnson in New York City, and page 33 as to Charles W. Kutz, in default, in the District of Columbia. William H. Fay and Melvin J. Hazen, defendants who transported me and all of my papers through Interstate Commerce to Salt Lake City, Utah, and put me on trial there, disappeared, cannot be found. The Board of Charities say they have "No Record of them. See par. 5th on page 102 of the Record.

C. Pr. Act, Sec. 225. Personal Service of Summons. The same as the Revised Statute of Utah.

Argument of Appellees (Utah Fuel Co. et als.).

They say:

(page 3) The basis of the motion to strike the complaint is due to the impossibility of framing an answer to the complaint by reason of its vague, indefinite, incoherent and unrelated allegations and scandalous nature. . . . In other words, on account of the factual basis for the motion made in the District Court, it would be impossible to prepare answers.

There is no merits in this argument. The Federal Rules of Civil Procedure for the Districts Courts of the United States do not permit a case to be dismissed on motion just because it is hard for the defendants (impossible) to prepare their answers. Fed. Rule 12, (e) provides the remedy for a more definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading. See page 10 of the Record where the subsection is set out in full.

The basis of the motion to strike the complaint is due to

the understanding reached between H. Collin Minton, Jr., and Judge Phillip Forman. See pages 4-5 above of this Memo. The basis is the promise of judicial promotion just as they did do with William H. Folland, co-defendant.

They Say:—unrelated allegations, (See 3rd-4th lines of page 3). There is no merits to this. Joint Tort Feasors—May be joint. Brown v. Southern Pacific Co., 31 U. 318, 88 P. 7; 104-3-13. Id. Defendants. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein; Fraud.—Of all parties to fraud. White v. Texas Co., 202 P. 826, 59 U. 180; Criminal.—All guilty. State v. Morgan, 22 U. 162, 61 P. 527; State v. King, 24 U. 482, 68 P. 418; Cheating of property.—Statute includes real estate as well as personal property. State v. Blake, 105 P. 910, 36 U. 605; "Torts".—Actions properly joined which arise out of continuous, official acts. Wilson v. Sullivan, 17 U. 341, 53 P. 14; Several causes of action arising out of injuries with or without force to person and property of either may be joined. Thomas v. Bythe, 44 U. 1, 137 P. 396; Continuous tortious acts may be combined to avoid multiplicity of suits. Willson v. Sullivan, 17 U. 341, 53 P. 994; Acts which constitute but a single wrong may be commingled even though, if separately stated, different defenses would apply. Reese v. Qualtrough, 48 U. 23, 156 P. 955. In this case the Sup. Ct. of the State of Utah says:

There is no reason whatever why the complaint should not be held good. Where facts are commingled in a complaint so that, if they were separated, different defenses would apply, or where a defendant might have a good defense to a certain group of facts constituting a cause of action which he does not have to all the facts as they are commingled in the complaint, the courts do not hesitate to require the plaintiff to separate the facts into separate causes of action so as to permit the defendants to intelligently meet all the matters set forth in the complaint. Where, as in this case, however, the wrongful acts complained of are of such a character, and

are so numerous and continuous and so blended together, that in legal effect they constitute but a single wrong or transaction, a segregation will not be required. If, under such circumstances, segregation were required, then the acts of each day would have to be stated separately as constituting separate and independent wrongs and causes of action. Please see the case as Reported. And see Joint Wrongs. Cooley on Torts. Vol. 1, Ch. V. p. 223, and cases cited thereunder.

These citations and parts of cases are entered here on the theory that the cases are controlling authorities in the case because the conspiracy originated in the State of Utah and the record shows that it is carried on, partly, from the Gen. Offices and Local Headquarters of the defendant Utah Fuel Company. See the Record of the case. See 3rd paragraph of their Statement of the Case as filed in the C. C. A. 3rd C. —special instructions from the attorney—They retain attorneys and many of them. See Curtis v. Utah Fuel Co. et als. No. 5547 U. S. Dist. Ct. D. of Utah.

I deem this Memorandum to be proper document lest this Court will be left in dark. And I do solemnly swear to the truth of the facts I set forth herein-and-above.

(Signed) NICHOLAS J. CURTIS.
NICHOLAS J. CURTIS, LL.B.,
Petitioner Appearing in Person.

Subscribed and sworn to before me
this 14th day of February, A. D. 1941.

IRENE E. LANSING,
Notary Public.)

Hugh's Federal Practice, Sec. 18681. Rules of Civil Procedure, Vol. 17. Rules 1-16. Rule 4 (c) provides: "Service of all process shall be made by a United States Marshal, by his deputy, . . . See Rule 4 (d) (2) and 7. Service of all process except subpoenas may be made by a United States Marshal, or his deputy.

Section 18682. Rule 4 (c)—What Marshal May Serve. Prior to the Act of June 15, 1935, (28 U. S. C. A. Sec. 503,

as amended), a marshal could only make effective service within his own district. The statute then in effect (R. S. Sec. 787, 28 U. S. C. A. Sec. 503) provided: It shall be the duty of the marshal of each district to attend the district court when sitting therein, and to execute throughout the district, all lawful process directed to him, and issued under the authority of the United States . . .

Under the above statute, a marshal could only serve process beyond the border of his own district. Harcness v. Hyde, 98 U. S. 476, 25 L. Ed. 237.

The act of June 15, 1935, however, amended the above quoted section by striking out the words "throughout the district" and "directed to him" so that 28 U. S. C. A. Sec. 503 now reads:

It shall be the duty of the marshal of each district to attend the district courts when citing therein and to execute all lawful precepts issued under the authority of the United States; and he shall have power to command all necessary assistance in the execution of this duty.

Section 18683. Service Outside District.—Anti-Trust and Interstate Acts. Section 103 U. S. C. A. applys to and governs all interstate cases which are not governed by the provisions of the Anti-trust laws. See Brief.

The petitioner has appealed to the United States Circuit Court of Appeals for the Third Circuit to review the conduct and rulings of the District Judge and thereupon said Appeal the Circuit Court of Appeals Third Circuit handed down its final decree dismissing my Appeal without any findings or conclusions.

This is a petition for writ of Certiorari to review the said decree of the Circuit Court of Appeals Third Circuit (28 U. S. C. Sec. 347 (Jud. Code Sec. 240, amended) (a).

The case was brought, and has proceeded to the points where this Honorable Court receives it in the court below, with disregard to jurisdictional, statutory, and Constitutional requirements. All essential questions of jurisdiction and procedure were fully disregarded by the tribunal in

the first instance, so that the decision sought to be reviewed is based squarely upon the merits of the Constitutional and Statutory issues presented.

Aside from the novelty and importance of the issues presented, the decision below should be reversed for the additional reasons, I submit, that it is clearly erroneous and not in accord with the principles of this Court.

To the extent that the decision below sustains the disregard of the Constitutional Statutory and jurisdictional requirements by the tribunal of the Court below, it is not in accord with the decisions of this Court in the cases cited and set out above in this petition, as well as in the following cases: (103 U. S. C. A. 28)

Continental Illinois Nat. Bank & T. Co. v. Chicago, etc. Co., 55 S. Ct. 23, 293 U. S. 58, 79 L. Ed. 197;

Wilder vs. United States. 27 Sup. Ct. 787, 204 U. S. 674. 51 L. Ed. 674; Mitchel v. Greenough, 59 S. Ct. 788, 306 U. S. 659, 83 L. Ed. 1056.

U. S. vs. Kissel, 31 Sup. Ct. 124, 126, 218 U. S. 606, 54 L. Ed. 1168;

In re Palliser, 136 U. S. 257, 262, 10 Sup. Ct. 1034, 34 L. Ed. 514;

Horner v. U. S. 143 U. S. 207, 12 Sup. Ct. 407, 36 L. Ed. 126;

Burton v. U. S., 202 U. S. 344, 381 et seq., 26 Sup. Ct. 688, 50 L. Ed. 1057; Hyde v. U. S., 225 U. S. 347 et seq.;

Lamar v. U. S., 240 U. S. 60, 36 Sup. Ct. 255, 60 L. Ed. 526;

United States vs. Fullheart quoting from Re Subold, 100 U. S. 871 on p. 895.; Hyde vs. Shine, 199 U. S. 62, 25 S. Ct. 760, 5 L. Ed. 90;

Haas v. Henkel, 216 U. S. 462, 30 S. Ct. 249, 54 L. Ed. 569, 17 Ann. Cas. 1112; Grayson v. United States, 272 F. 553; Grigg v. Bolton 53 F. 2d. 158; U. S. v. Freeman, 239 U. S. 117, 36 S. Ct. 30, 60 L. Ed. 172; U. S. v. Alaska Cons. Canneries, 2 F. 2d. 614; Putnam v. U S. 162 U. S. 687, 708, 16 S. Ct. 923, 40 L. Ed. 1118;

Benson v. Henkel, 198 U. S. 1, 25 S. Ct. 569, 49 L. Ed. 919;

In Re Palliser, 136 U. S. 257, 10 S. Ct. 1034, 34 L. Ed. 514;

U. S. v. Lombardo, 241 U. S. 73, 77, 36 S. Ct. 508, 510, 60 L. Ed. 897;

(377 U. S. C. A. 28)

Federal Power Co'n v. Metropolitan Edison Co., 58 S. Ct. 963, 304 U. S. 375, 82 L. Ed. 1408;

In re 620 Church Street Bldg. Corp. et al. 57 S. Ct. 88, 299 U. S. 24, 81 L. Ed. 16;

Steelman v. All Continent Corporation, 57 S. Ct. 705, 301 U. S. 278, 81 L. Ed. 1083; Julian v. Central Trust Co., 193 U. S. 93, 112, 24 S. Ct. 399, 48 L. Ed. 629; North Laramie Land Co. v. Hoffman et al. 268 U. S. 276, 283, 45 S. Ct. 491, 494, 69 L. Ed. 953;

(Title 15 Sec's 1, 5, 15, 22, 24, 26)

People's Tobacco Company v. American Tobacco Company, 246 U. S. 79, 87, 38 S. Ct. 233, 62 L. Ed. 587, Ann. Cas. 1918 C. 537;

Gen. Inv. Co. v. Lake Shore Ra'wy. 260. U. S. 261, 279, 43 S. Ct. 106, 67 L. Ed. 244; Minnesota v. Northern Securities Co. 194 U. S. 48, 71, 24 S. Ct. 598, 48 L. Ed. 870; Wilder Manufacturing Co. v. Corn Product Refining Co. 236 U. S. 165, 174, 35 S. Ct. 398, 59 L. Ed. 520;

Paine Lumber Co. v. Neal, 244 U. S. 459, 471, 37 S. Ct. 718, 61 L. Ed. 1256; Geddes vs. Anaconda Mining Co. 254 U. S. 590, 593, 41 Sup. Ct. 206, 95 L. Ed. 425;

The decision is not in accord with the decisions of all other Circuit Courts of Appeals in the cases cited and set out above in this petition, as well as in the following cases:

Frey & Son v. Cudahy Packing Co., 228 Fed. 209;

Thomas v. United States, 156 Fed. 897, 84 C. C. A. 477;

Radin v. U. S., 189 Fed. 568, 111 C. C. A. 6;

Grayson v. U. S., 272 F. on p. 557, (8) U. S. v. Sanch, 7 Fed. 715; Rease v. U. S., C. C. A. 4th C., 99 Fed. 2d. 752, (5); Smith v. U. S., C. C. A. 9th C. 92 F. 2d. 460, (1-2); Fabacher v. U. S., C. C. A. 5th C., 84 F. 2d. 602, (5); U. S. v. Jordan, 22 F. 2d. 102 (2); Dealtry v. Posse School, Inc. C. C. A. 1st C. (1938) 100 F. 2d. 470 (1-2); Aetna Casualty & Surety Co.

v. Yeats, C. C. A. 4th C., 99 F. 2d. 665, (6); In re Philadelphia & Reading Coal & Iron Co. 103 F. 2d. 901; Holmes v. Rowe, C. C. A. 9th C. 97 F. 2d. 537, (1-2); Hellawell v. Grafeld, 22 F. 2d. 765, (5); In re Diversey Bldg. Corporation, 86 F. 2d. 456, (1-3); Whittel v. Roche, 88 F. 2d. 366; Bethke v. Grayburg Oil Co., 89 F. 2d. 536; Lanning v. Osborne, 79 F. 657, 662; U. S. v. Van Dusen, C. C. A. 9th C., 78 F. 2d. 125; Shell Oil Co. v. District Court of U. S. N. Dist . . ., C. C. A. 9th, 70 F. 2d. 394; Mitchel v. Greenough, 100 F. 2d. 184; Rease v. U. S., 99 F. 2d. 753, C. C. A. 4th C.; Bridgeman v. U. S. 140 F. 577; U S. v. Downey, 251 F. 366; Smith v. U. S., C. C. A. 9th C. 92 F. 2d. 460, (1-3); Hansen Packing Co. v. Armour & Co., 16 F. Supp. 784; Jeffrey-Nichols Motor Co. v. Hupp. Motor Car Corp. C. C. A. 46 F. 2d. 623; Williamson v. Columbia Gas & Electric Corp. 27 F. Supp. 198, (4-6); Glen Coal Co. v. Dickinson Fuel Co., 72 F. 2d. 885; Murry v. Patrie, Fed. Cas. No. 967; Western Pocahontas Corporation v. Accord, 178 F. 843; John Gund Brewing Co. v. U. S. 204 F. 17, 122 C. C. A. 331; U. S. v. Philadelphia, etc. R. Co., 237 F. 292; U. S. v. John Kelso Co., 86 F. 304, 308;

In the interest of brevity (Rule 38, par. 2; Furness, Withy & Co., Ltd. v. Yang-Tsze Ins. Asso., Ltd., 242. U. S. 430), petitioner does not at this time set forth all of the points which will be urged at the argument on the merits of this cause should the writ be granted, nor all of the contentions in support of such points; but in order to comply with the rule of this Court requiring that all issues upon which decision is requested be presented in the petition for certiorari (Gunning v. Cooley, 281 U. S. 90, 98), petitioner here refers to and incorporates into this petition all of the matters presented in his record, assignment of errors and Brief on the Appeal to the U. S. C. C. of Appeals Third Circuit, with the same force and effect as herein set out in full.

Wherefore your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals, Third Circuit, commanding that court to

certify and send to this court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein; and that the decree of the Circuit Court of Appeals 3d Circuit be reversed by this Honorable Court, and your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

NICHOLAS J. CURTIS, LL. B.
Petitioner Appearing in Person,
No. 106 Mansion Street,
Poughkeepsie, New York.

STATEMENT OF POINTS ON WHICH PETITIONER INTENDS TO RELY. THE SAME AS THOSE TO THE CIRCUIT COURT. SEE THEM ON PAGES 80, 81, and 82 of the Printed Parts of the RECORD. ALSO THE LAST THREE PAGES OF THE BRIEF; AND IN ADDITION THERETO THOSE SET FORTH IN THE "SUMMATION" IN THE LAST PART OF THE BRIEF.

Respectfully Submitted,
NICHOLAS J. CURTIS, LL.B.
Petitioner Appearing in Person.

No. 867 (6)

Office - Supreme Court, U.
FILED
MAR 24 1941
CHARLES ELMORE CROP
CLERK

United States Supreme Court

WASHINGTON, D. C.

NICHOLAS J. CURTIS,

Plaintiff-Appellant,

vs.

UTAH FUEL COMPANY, a corporation, its officers and agents, specifically, DR. E. R. MURPHY; DR. ROBERT S. ALLISON (deceased); DR. FRANCIS S. BASCOM (deceased); H. COLLIN MINTON, JR., and FERDINAND ERICKSEN, its attorneys; NICHOLAS J. PAPPAS, Paterson, N. J.; HELEN N. PAPPAS, Paterson, N. J.; SORTIRIOS NICHOLAIDIS, Paterson, N. J. (not served); HARRY SUSSMAN, Paterson, N. J.; WILLIAM V. ROSENKRANZ, Paterson, N. J.; LOUIS BROWNLOW, Washington, D. C. (not served); CHARLES W. KUTZ, Washington, D. C. (in default); DR. PERCY HINKLING, Washington, D. C. (deceased); WILLIAM H. FAY, Washington, D. C. (cannot be found); WILLIAM J. HAZEN (MELVIN J. HAYS) Washington, D. C. (cannot be found); WILLIAM H. FOLLAND, Salt Lake City, Utah (in default; no motion or other pleading); DR. LESLIE J. PAUL, Salt Lake City, Utah (no appearance. In default); DR. SAMUEL WOLF, Salt Lake City, Utah (deceased); SIMON BAMBERGER, Salt Lake City, Utah (deceased, BAMBERGER COAL CO. substituted); DR. FREDERICK DUNN, Springville, Utah (appear by Special Appearance, name only); DR. FRED W. TAYLOR, Provo, Utah (no appearance; in default); DR. A. C. CALLISTER, Salt Lake City, Utah (appearance by Special Appearance, name only); DR. D. E. SMITH, Salt Lake City, Utah (appearance by Special Appearance, name only); CAROL C. JOHNSON, New York (Motion to Vacate); JOSEPH RIRIE, Salt Lake City, Utah (deceased); D. O. LARSON, Salt Lake City, Utah (no appearance; in default); CHARLES E. MAYBE, Salt Lake City, Utah (no appearance, name only on Special Appearance list, no Motion or Affidavit); MARK TUTTLE, Salt Lake City, Utah (no appearance; in default),

Appellees.

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